Adjustments to the Public Records Act to Allow for Advanced Transportation Operations and Management

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PROBLEM DESCRIPTION AND BACKGROUND

The State of Washington's Public Records Act (PRA) was originally passed as a ballot initiative in 1972 by a vote of the people of the state. The PRA has been refined multiple times since it was originally adopted. The legislation was designed to provide more transparency in the decision-making process at all levels of government. At the same time, the law also directly acknowledges that citizens have privacy rights that deserve protections. Unfortunately, the current version of the PRA was not written to account for how new technology has changed the collection of data, how those data are used both for business applications and to manage the transportation system, and how those data can be used by unscrupulous individuals to harm the citizens of the state.

Modern computer and communications technologies allow companies to offer a wide variety of useful transportation services. These include gathering data on where and when people wish to travel, the modes available in specific locations, the cost of each modal option, and the level of service available for each of those modes (e.g., wait time and travel time). This information greatly increases the travel options available to the public. Use of summaries of these same data by government agencies allows those agencies to better coordinate the delivery of services in order to manage the transportation system as a whole, improve the equity and efficiency of the transportation system, and optimize the use of limited taxpayer funds.

To perform the required system management and oversight tasks, public agencies need access to the data collected through modern computer and communications technologies, both through systems owned and operated by the agencies and by accessing data collected by private companies.

The difficulty in working with these data is that the current PRA treats all data as public record and thus subject to release, unless specifically exempted from release. Unfortunately, modern transportation data can be readily used to identify the behavior of specific individuals, violating their privacy, and in some cases placing them in harm's way. The seminal research on

this topic was performed by Montjoye in 2013[1]. That study showed that in a data set that recorded cellphone locations every hour, only four randomly selected data points were needed to identify 95 percent of the users of those devices. This study clearly demonstrated that release of data that describe personal traces (that is, the locations of individuals or devices in sequence over time–the exact type of data that describe pick-ups/drop-offs by taxi fleets or freight delivery vehicles, as well as shared bikes or eScooters), even when personal or device identifiers have been anonymized, allows the individuals creating those traces to be re-identified and their movements tracked.

In addition, sharing of data collected and used by businesses often places those businesses at risk because of the potential loss of both business trade secrets and customer confidence in how those companies treat sensitive customer data.

The result is that companies are unwilling to share data with public agencies, as sharing of those data presents considerable business risk. At the same time, public agencies place citizens at risk if they collect those data in any way, including collecting the data themselves (for example, as part of systems that compute travel time on arterial segments to better time traffic lights) or requiring the release of data from companies as part of public policy or permitting.

Yet without those data, public agencies simply cannot manage the transportation system to the benefit of those same citizens.

The key issue is that the language in the current PRA was written at a time that these specific data issues did not exist. While the clear intent of the law is to protect the privacy of citizens, as well as the rights of companies to protect their core business information and trade secrets, the current version of the PRA does not specifically address the need to share modern transportation data while still meeting the goal of public transparency in government decision making.

Therefore, the issue this research project is designed to address is the need to refine the language in the PRA to clarify how modern transportation data can be collected and used while simultaneously protecting 1) citizens' rights to privacy, 2) the ability of businesses to protect their proprietary business information from release to their competitors, and 3) the need for transparency of the information being used for public decisions.

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[1] Montjoye, Yves-Alexandre, C. Hidalgo, M. Verleysen, and V. Blondel, "Unique in the Crowd: The privacy bounds of human mobility" in Scientific Reports Volume 3, Article #1376, 2013,

OBJECTIVES

The primary objective for this project is to develop recommended changes to the state's Public Records Act that would enable the state's public agencies and governmental jurisdictions (e.g., cities, counties) to obtain and use a variety of new electronic data—often collected by the private sector—that describe the movement of individuals, vehicles, and companies' assets without releasing detailed data to the public that include information that could compromise the privacy of individuals and the trade secrets of companies.

The intent is to clarify privacy and trade secret protections of the individuals and companies within the law, while maintaining transparency in government decision making and enabling public agencies to work with private sector data to effectively manage the transportation system.

BENEFITS

Currently the PRA provides that the majority of records developed, obtained, or used by public agencies in the state are subject to public release—as they should be. The PRA includes specific exemptions, including, for example, electronic transit farecard payments and electronic toll transaction records. However, a large number of other modern, electronic data sources exist that generate data that identify both individuals and company trade secrets, the release of which is not protected by the PRA and could potentially harm those individuals and companies.

Many companies that might otherwise be quite willing to share data with the public sector currently decline to do so because sharing data with public agencies opens the data to public release, which would both violate the trust companies have with their clients and subject the individuals identifiable in their data to possible harm. This lack of data hinders the public sector in most effectively managing the transportation system.

This research project is designed to remove these barriers to the sharing and use of data for the public good while still protecting the need for open government.

DELIVERABLES

The first set of deliverables for this project will consist of a small number of white papers describing the key interests and concerns of stakeholders involved in the collection and use of transportation data, as well as the key interests and concerns of stakeholders that defend open government, individual privacy, and the rights of companies to maintain trade secrets.

The primary project deliverable will be a set of annotated, recommended amendments to the state's public records act. These suggested adjustments will be designed to improve the state's ability to obtain and use the data needed to operate and manage the transportation system, while more effectively guarding the public's right to privacy, companies' rights to trade secrets, and the public's right to both understand the data used to make public decisions and the ability to have confidence in those data.

WORK PLAN

Nine tasks will be performed in this project. These tasks are as follows:
- Develop and refine a work plan
- Review the law
- Recruit stakeholder groups
- Hold stakeholder meetings
- Generate issues papers
- Draft initial PRA revisions
- Perform legal tests of those revisions
- Refine the recommended PRA revisions
- Submit proposed revisions and work with the Legislature.

Each of these tasks is briefly described below.

Task 1: Develop and Refine the Work Plan

In this task, the project team will further develop, refine, and expand on this draft work plan. This work will include working with the project funders to ensure that the stakeholders being recruited represent key viewpoints within the state, and that the research team is aware early on of specific issues that need to be incorporated in the legal review and addressed in the issues papers. The final work plan will include a refinement of the list of deliverables and the project schedule.

Task 2: Review the Law

In this task, the UW Law School will examine other open records laws around the country and abroad to determine how different states or nations have dealt with finding a balance between individual privacy, proprietary company data, and the need for open records. This work will

provide a variety of potential solutions for consideration by the stakeholder groups participating in the project.

Task 3: Recruit Stakeholders

In this task, the project team will recruit companies, agencies, and organizations to participate in the review and refinement of the PRA. The intent is to ensure that stakeholders from across the spectrum of concerns about the PRA are represented in order to ensure that a broad array of concerns is addressed within the refinements being developed and recommended. The following types of organizations are expected to be recruited for participation in the project:

- public transportation providers and agencies (e.g., WSDOT, transit agencies, the Washington State Transit Association, county governments, city governments)
- private companies that have data that if shared would allow for better transportation system management (e.g., Uber, Lyft, Amazon, UPS, Fed Ex)
- non-profit organizations that lobby for individual rights and/or open government (ACLU, Washington Coalition for Open Government)
- major news organizations (e.g., Allied Daily Newspapers of Washington, the Seattle Times, KUOW, etc.).

Task 4: Hold Stakeholder Meetings

In this task, the project team will hold a series of stakeholder meetings. At least some of these meetings will be with specific stakeholder groups (e.g., the public agencies will have one meeting, private companies will participate in a different meeting), while other meetings will include all stakeholders. The intent is to not only give each group an opportunity to speak freely, but also to create an opportunity for them to work together to brainstorm ideas and solutions to problems identified.

The goal of these meetings will be to gain a better picture of the issues that are important to each group, as well as to discuss possible solutions to the barriers to cooperation that would benefit the public and the stakeholders themselves.

Task 5: Generate Issues Papers

The results of the stakeholder meeting will be a small number of issues papers that will outline the key outcomes that will need to be met for the PRA to be refined. This task will be used

to write drafts of those issue papers. The papers will then be reviewed by the stakeholders and refined on the basis of their feedback.

Task 6: Draft Initial PRA Revisions

In this task, a portion of the legal team within the project team will develop suggested revisions to the PRA.

Task 7: Perform Legal Tests on the Initial Revisions

A separate portion of the project's legal team will then perform legal tests on the suggested revisions to identify weaknesses in the suggested revisions so that improvements can be made to those recommendations before they are submitted to the Legislature for consideration.

Task 8: Refine the Recommended PRA Revisions

On the basis of the findings of the legal review, refinements will be made to the changes recommended for inclusion in the PRA.

Task 9: Submit Proposed Revisions and Work with the Legislature

The project team will then submit the revisions to the legislature and be available to the Legislature to answer questions about those recommendations.

STAFFING PLAN

Hugh Spitzer, a professor in the UW School of Law, will lead the legal work associated with this project. Hugh will be supported by Ramsey Ramerman, an assistant city attorney for the City of Everett and a member of the PRA Sunshine Committee, the Municipal Research and Services Center, and a law student from the UW School of Law.

Mark Hallenbeck, Director of the Washington State Transportation Center, will lead the stakeholder involvement effort and will be responsible for describing the details of the transportation data to be collected and reported. He will be supported by a graduate student from the Evans School of Public Policy and Governance.

SCHEDULE

The project will begin June 15, 2020, and will have draft legislation pre-filed in late October so that it can be presented as part of the Legislature's Fall weekend "pre-session" review.

Final recommendations will be available by December 21, 2020, with some minor time available for Hugh Spitzer to be available to the Legislature during 2021. A more definitive schedule will be developed as part of Task 1, the refinement of the project work plan.

BUDGET

This project is requesting a budget of $65,000 to be provided through the Washington State Department of Transportation's Research Office. A detailed budget for this funding is shown below. Additional funding to support this project is being pursued through other University of Washington sources.